

Decision **DRAFT DECISION OF ALJ VIETH** (Mailed 4/8/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

George E. Penington,

Complainant,

vs.

San Diego Gas & Electric Company,

Defendant.

Case 02-12-022
(Filed December 17, 2002)**OPINION DENYING COMPLAINT****Summary**

We conclude that George Penington (Penington) is not entitled to a refund of \$6,354.00 paid to San Diego Gas & Electric Company (SDG&E) to extend natural gas service to two residential buildings. On the undisputed facts provided, we find that SDG&E has charged Penington correctly for the service extension under its tariffs. Accordingly, we deny the complaint.

Nature of Dispute

Penington challenges SDG&E's assessment that he is not entitled to a refund of the \$6,354 that SDG&E charged him for extending natural gas service to two buildings from an existing gas main located in a public street. Penington asserts that SDG&E has misinterpreted its Rule 15 [Gas Main Extensions] and Rule 16 [Gas Service Extensions] and consequently has failed to give him the maximum available allowance, which he claims would result in a full refund to

him. SDG&E argues that the service extension does not meet the criteria necessary for a main extension allowance and that all residential allowances (for gas loads to supply water heat, space heat and range) were allocated. As we shall see, the parties' dispute turns on interpretation of the term "service", as used in Rules 15 and 16. Penington states that no hearings are necessary and SDG&E agrees.

The material facts are undisputed. Each of the buildings consists of four separately metered, residential units, for a total of eight metered units. The parties variously describe the service extension from the gas main to the two buildings as requiring two service laterals (Penington) or one service lateral and one branch service (SDG&E), but with respect to the dispute at hand, the different descriptions are immaterial.¹ Appendix B to SDG&E's Answer is the Gas Meter Location Service Order, which includes a diagram of the project. The diagram shows a 75-foot pipeline interconnecting with the existing gas main and ending at the service delivery point of Building 1; a 30-foot pipeline branches off the 75-foot pipeline and ends at the service delivery point of Building 2. At Penington's request, SDG&E performed all of the work to connect the two buildings with the existing gas main, including trenching, soil compaction and installation of the eight new meters.

¹ A "service lateral" consists of the "pipe, valves, meters, regulators, and associated equipment" between the gas main and the "service delivery point," which is the interconnection with the house line, usually near the meter(s). (*See* SDG&E's Rule 16.I.) A "branch service" is not connected to a gas main but has another source of supply, such as a service lateral. (*See* SDG&E's Rule 1.)

Discussion

Three SDG&E tariffs are central to this dispute: Rule 1 [Definitions], which defines terms used in successive tariffs, Rule 15 [Gas Main Extensions] and Rule 16 [Gas Service Extensions]. Rules 15 and 16 each have a Section I., which is a list of additional definitions of certain capitalized terms in that particular tariff, though other terms are defined within the body of each tariff. As the tariffs are lengthy and readily available on SDG&E's website, we have not attached them to this decision.

We begin with a brief overview to orient the reader and highlight the specific provisions determinative of the parties' dispute. Both Rules 15 and 16 contain statements of applicability. Rule 15 applies "to the extension of gas Distribution Mains." Rule 16 pertains to (1) the utility "Service Facilities" that run from the "Distribution Main facilities to the Service Delivery Point" as well as (2) the "service related equipment required of Applicant on Applicant's Premises to receive gas service." Both rules explain that a distribution main operates at distribution pressure and supplies three or more services. (*See* SDG&E's Rules 15.I. and 16.I.) A distribution main connects with a service line, typically either a service lateral or a branch service, which in turn connects with the service delivery point. (*See* footnote 1, *supra*, for definitions of these terms.) A "service" consists of all the facilities between the distribution main and the service delivery point, i.e. "all pipe, valves and fittings from and including the connection at the main up to the service delivery point". (SDG&E's Rule 1.)

Connecting new residential load, such as Penington's two multi-unit buildings, to the utility's natural gas system generally requires a service extension under Rule 16. Sometimes a Rule 15 main extension also is required, though Penington did not need one. Applicant and utility responsibilities for the

costs of both types of extensions are set out in the rules. The applicant is responsible for all trenching, digging and soil compaction needed for service installation.² (*See* SDG&E's Rule 16.D.1.i.) The applicant may do the work or hire the utility to do it. (*See* SDG&E's Rule 16.D.3.)

The applicant also is responsible for any excess in the cost of the installed service extension over a standard allowance. (*See* SDG&E's Rule 16.E.3.a.) This adjustment is based on the same formula used to compute a main extension allowance and weighs the net revenue from the extension against a cost of service factor. For residential extensions, the formula results in a per-unit allowance assigned to four, separate gas usages: water heating (\$451), space heating (\$460), oven/range (\$116), and dryer stub (\$115). (*See* SDG&E's Rule 16.E.1, which cross-references SDG&E's Rule 15.C, and SDG&E's Rule 15.C.3) Both Rules 15 and 16 require the utility to apply the allowance first to the service extension, including any metering, and then to apply any excess to the main extension. (*See* SDG&E's Rule 15.C.1. and SDG&E's Rule 16.E.1.)

SDG&E admits that it calculated an allowance of \$1,027 (the total residential allowance for water heating, space heating, and range) for each of the eight units and applied the total toward the eligible service extension costs. Since this allowance covered the eligible costs, including the metering costs, SDG&E did not charge Penington for them. However, since trenching and related activities are outside the allowance, SDG&E correctly charged him \$6,354 for that part of the job.

² On the other hand, the utility is responsible for trenching, etc., in connection with a main extension. (*See* SDG&E's Rule 15.B.2.)

Penington's interpretation of Rules 15 and 16 suggests less than careful reading of two lengthy, complex, and interrelated tariffs. Penington focuses on Rule 16.B.3.a., which governs the metering extension portion of a service extension to residential buildings with multiple occupancy and provides, in relevant part: "Utility will individually meter gas service to every residential unit in a residential building ..." He argues that this establishes that the term "service" refers, generically, to the provision of gas to each customer at a unique meter and not to the service lateral between the gas main and the meter. He then turns to Rule 16.E.1., which, as we have already seen, requires the utility to use the Rule 15.C. main extension formula in calculating service allowances. Penington interprets these provisions to mean that allowances will be based on the total number of services added, which he defines in terms of customer meters, not service laterals. Next, without specific attribution, Penington states that under Rule 15, SDG&E considers all new gas lines to be mains, even those that serve a single residential customer. He argues that the same policy should apply to connections with multiple-residency buildings. Under Penington's theory, then, because his project resulted in the connection of eight meters, it added eight services and the pipe and other equipment enabling that connection should be deemed to be a main extension (which requires the addition of at least three services). As we note in footnote above, the utility is responsible for trenching and associated activities in connection with a main extension. So under Penington's theory, SDG&E was responsible for the trenching done on his job and \$6,354 should be refunded to him.

However, a careful reading of Rules 1, 15 and 16 does not support Penington's theory. We do not find that use of the word "services" in Rules 15 and 16 is ambiguous and susceptible to the interpretation he seeks. Based on the

undisputed facts provided, SDG&E has charged Penington for the job correctly and no refund is due.

Miscellaneous Procedural Matters

Penington filed this complaint against SDG&E on December 17, 2002. The instructions to answer, dated January 14, 2003, categorized the complaint as an adjudicatory proceeding and indicated that hearings might be scheduled. On February 13, SDG&E timely filed an answer. The categorization has not been appealed and neither party has requested an evidentiary hearing. By ruling on March 7, the ALJ directed SDB&E to clarify its answer as described in that ruling and accordingly, on March 24, filed the supplemental information.

After review of the pleadings, we conclude that the material facts are not in dispute. Accordingly, we change the determination in the instructions to answer that this proceeding required a hearing. We conclude that no hearing is necessary, in compliance with Rule 6.6 of the Commission's Rules of Practice and Procedure.

Comments on Draft Decision

The draft decision of ALJ Jean Vieth in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. No comments were filed.

Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner and Jean Vieth is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The sole issue between the parties is whether the term "services" used in SDG&E's Rules 15 and 16 refers to service laterals or customers.

2. Careful reading of SDG&E's Rules 1, 15 and 16 establishes that the term "services" refers to service laterals.

3. Based on the undisputed facts provided, SDG&E has charged Penington correctly for the service extension to two multiple residency buildings and no refund is due.

Conclusions of Law

1. The material facts are undisputed.
2. No hearing is necessary.
3. Use of the word "services" in SDG&E's Rules 15 and 16 is not ambiguous.
4. The complaint should be denied.
5. In order to resolve this dispute expeditiously and provide certainty to the parties in their business dealings, this decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The complaint is denied.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.